S Subramaniam & Ors v Inderjit Kaur d/o Karnail Singh & Anor

HIGH COURT (ALOR SETAR) — ORIGINATING SUMMONS NO 24–733–1996
MOHD HISHAMUDIN J
5 JUNE 1997

Land Law *— Concurrent interests — Partition — Co-proprietor had majority share applied for partition — Other co-proprietors did not join in or consent to partition — Whether application should first be made to land administrator in first instance — Whether applicant may apply to High Court — National Land Code 1965 ss 141A, 142 & 145*

This application by the plaintiffs raised the question whether a co-proprietor for a piece of land, who was also the holder of a majority share in that land, could apply to the court for the partition of the land pursuant to s 145(1)(a) of the National Land Code ('the NLC'). Both parties were the co-proprietors of a piece of land ('the land'). The plaintiffs held the majority share whilst the defendants held the minority share. The plaintiffs wanted to partition the land so that the first defendant would cease to be a co-proprietor and instead would be issued with a separate title for a portion of the land the size of her proportionate share. The plaintiffs had informed the first defendant in writing of their intention to apply to the land administrator to have the land partitioned but the first defendant had refused to give her consent. Thus the application to the court. A question was posed whether the court had jurisdiction to hear the application.

Held, dismissing the application:

(1) The court had no jurisdiction to make the order sought. Since it was the holder of the majority share who wanted the land to be partitioned, they had to comply with the provisions of the NLC dealing specifically with such a situation, ie s 141A read together with s 142 of the NLC (see p 370E–F).

(2) Section 145(1)(a) of the NLC only refers to a situation where it is the holder of the minority share who intends to apply to the land administrator pursuant to s 142 but one of the co-proprietors has refused to consent to it. The holder of the minority share can then apply to the court pursuant to s 145(1)(a) (see p 371A–B).

(3) The holder of the majority share can only apply under s 141A read with s 142 where he is not required to obtain consent of the other co-proprietor(s) and this exemption is made clear by s 142(1)(e). If the application is rejected, he can appeal to the High Court against that rejection (see p 372B–D, G).

[Bahasa Malaysia summary

Permohonan ini oleh plaintif-plaintif membangkitkan persoalan sama ada seorang tuan punya bersama untuk sebidang tanah, yang juga merupakan pemegang suatu bahagian lien majoriti dalam tanah

tersebut, boleh memohon kepada mahkamah untuk pecah sempadan tanah tersebut menurut s 145(1)(a) Kanun Tanah Negara ('KTN'). Kedua-dua pihak adalah tuan punya berdaftar sebidang tanah ('tanah tersebut'). Plaintif-plaintif memegang bahagian majoriti manakala defendan-defendan memegang bahagian minoriti. Plaintif-plaintif ingin memecah sempadan tanah tersebut supaya defendan pertama tidak lagi menjadi tuan punya berdaftar dan sebaliknya akan dikeluarkan hakmilik berasingan untuk sebahagian tanah tersebut yang mana saiznya setara dengan bahagian bersekadarnya. Plaintif-plaintif telah memaklumkan kepada defendan pertama secara bertulis tentang hasrat mereka untuk memohon kepada pentadbir tanah supaya memecah sempadan tanah tersebut tetapi defendan pertama enggan memberikan kebenaran. Maka permohonan dibuat kepada mahkamah. Persoalan yang dikemukakan adalah sama ada mahkamah mempunyai bidang kuasa untuk mendengar permohonan itu.

Diputuskan, menolak permohonan:

(1) Mahkamah tidak mempunyai bidang kuasa untuk membuat perintah yang dipohon. Oleh kerana ia adalah pemegang bahagian majoriti yang ingin tanah tersebut dipecah sempadankan, mereka harus mematuhi peruntukan KTN yang berkaitan dengan keadaan sedemikian, iaitu s 141A dibaca bersama dengan s 142 KTN (lihat ms 370E–F).

(2) Seksyen 145(1)(a) KTN hanya merujuk kepada suatu keadaan di mana ia adalah pemegang bahagian minoriti yang ingin memohon kepada pentadbir tanah menurut s 142 tetapi salah seorang tuan punya berdaftar telah enggan bersetuju kepadanya. Pemegang bahagian minoriti kemudiannya boleh memohon kepada mahkamah menurut s 145(1)(a) (lihat ms 371A–B).

(3) Pemegang bahagian majoriti hanya boleh memohon di bawah s 141A dibaca dengan s 142 di mana dia tidak dikehendaki memperolehi kebenaran tuan punya yang lain dan pengecualian ini dijelaskan oleh s 142(1)(e). Jika permohonan ditolak, dia boleh merayu kepada Mahkamah Tinggi terhadap penolakan itu (lihat ms 372B–D, G).]

Notes

For cases on partition, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1582–1585.

Case referred to

Ku Yan bte Ku Abdullah v Ku Idris bin Ku Ahmad & Ors [1991] 3 MLJ 439 (refd)

Legislation referred to

National Land Code 1965 ss 141A, 142, 145(1)(a), 418

Mohd Kamal bin Mohd Noor (*Jayadeva & Kamal*) for the plaintiffs
Megalai (*Meg & Co*) for the first defendant.

Cur Adv Vult A

Mohd Hishamudin J: This application by the plaintiffs raises the question as to whether a co-proprietor of a piece of land, who is the holder of the majority share in the land, can apply to the court for the partition of the land pursuant to sub-s (1)(a) of s 145 of the National Land Code 1965 ('the NLC'). B

The plaintiffs and the defendants are the co-proprietors of a piece of land known as Surat Putus No 54667, Bahagian No 226, Mukim Padang China, Daerah Kulim, Kedah. The plaintiffs hold the majority share while the defendants hold the minority share.

The size of the land is about 26 hectares. The respective shares of the co-proprietors are as follows: C

First plaintiff	...	2/10
Second plaintiff	...	2/10
Third plaintiff	...	2/10
Fourth plaintiff	...	2/10
First defendant	...	1/10
Second defendant	...	1/10

D

Due to some disagreement between the plaintiffs and the first defendant over the management of the land, the plaintiffs are desirous of partitioning E the said land so that the first defendant will cease to be a co-proprietor and, instead, will be issued with a separate title for a portion of the land the size of which shall be in proportion to the extent of her share in the land, with the remaining co-proprietors (ie the four plaintiffs and the second defendant) continuing to be co-proprietors in respect of the remaining portion of the land. F

The plaintiffs submitted a plan to this court, prepared by a qualified land surveyor, showing how they propose the partition to be carried out. The plaintiffs had informed the first defendant in writing of their intention to apply to the land administrator to have the land partitioned (in the manner as I have just mentioned) but the first defendant had refused to G give her consent to the proposal. Hence, purportedly pursuant to s 145(1)(a) of the NLC, the plaintiffs apply to this court for an order that the land be partitioned in accordance with the submitted plan.

The defendants do not object to this application.

When the matter came before me for hearing, I posed the question as H to whether I have the jurisdiction to hear the application. Encik Kamal, the learned counsel for the plaintiffs, submitted that I have. He said that I have the jurisdiction by virtue of ss 142 and 145 of the NLC. Learned counsel also referred to *Ku Yan bte Ku Abdullah v Ku Idris bin Ku Ahmad & Ors* [1991] 3 MLJ 439.

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Puan Megalai, the learned counsel for the first defendant, was of the same view.

Section 142 of the NLC states:

A Application for approval.

142 (1) Any application for approval of the partition of any land shall be made in writing to the Land Administrator in Form 9B, and shall be accompanied by —

(a) such fee as may be prescribed;

B (b) a plan of the land on a scale sufficient to satisfy the Land Administrator of all the details of the partition, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;

C (c) if it is so prescribed or, in the absence of any such prescription, if the Land Administrator so requires, a copy of any approval or consent required under paragraph (c) of subsection (1) of section 136 (as applied by section 141);

(d) all such written consents to the making of the application as are required under paragraph (c) of the said sub-section as so applied; and

D (e) the written consent to the making of the application of any co-proprietor who has not joined therein, provided that in the case of an application made under section 141A, such consents shall be dispensed with.

(2) Upon receiving any application under sub-section (1), the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land to which it relates.

E (3) In the case of an application made under section 141A, the Land Administrator shall notify the other co-proprietors of the proposed partition, requiring them to submit in writing within a period of twenty-eight days from the date of service of the notice, any objection setting out fully the grounds on which the objection is based.

F (4) Upon expiry of the period specified in sub-section (3), the Land Administrator —

(a) where there are objections, shall notify the applicant and the remaining co-proprietors and hold an enquiry at the specified time and place, and —

G (i) if satisfied that good grounds exist, shall reject the application or, in the case of an application relating to the land the partition of which requires the approval of the State Director, shall recommend that the application be rejected; or

(ii) in any other case, may approve the application or (as the case may be), recommend to the State Director that the application be approved; and

H (b) where there are no objections, after due consideration, may approve the application or (as the case may be), recommend to the State Director that the application be approved.

Section 145 provides:

I Power of Court to facilitate termination of co-proprietorship

145 (1) Where, in the case of any land vested in co-proprietors —

(a) any of the co-proprietors will neither join in, nor consent to the making of, an application for partition under this Chapter; or

(b) by reason of the operation of paragraph (f) of sub-section (1) of section 136 (as applied by section 141), partition of the land between all of the co-proprietors is incapable of being approved under this Chapter,

the Court, subject to and in accordance with the provisions of any law for the time being in force relating to civil procedure, may, on the application of any of the co-proprietors, make such order as it may think just for the purpose of enabling the co-proprietorship to be terminated.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Court may on any application under that sub-section order —

(a) that, subject to the making between the co-proprietors of such payments as the Court may consider equitable having regard to the comparative values of the individual portions thereby proposed, any application for partition made by one or more of the co-proprietors in the terms specified in the order shall be deemed for the purposes of this Chapter to have been made by them all;

(b) that the undivided share of any of the co-proprietors be transferred on terms specified in the order to the other co-proprietors, or to any of them; or

(c) that the land be sold.

In the present case, with respect, it is my judgment that I have no jurisdiction to make the order sought for. In my view, since it is the co-proprietors holding the *majority share* who want the land to be partitioned, they have to comply with the provisions of the NLC dealing specifically with such a situation. That provision is s 141A read with s 142 of the NLC. Section 141A provides:

Application for partition by co-proprietors.

141A Notwithstanding the provisions of sections 140 and 141, a co-proprietor or co-proprietors holding the majority share in the land may apply for approval to partition the said land.

The co-proprietors in question cannot make an application to court pursuant to s 145(1)(a). Under the provisions of ss 141A and 142, they have to apply to the land administrator in Form 9B (with the necessary modification); and in applying to the land administrator, they are required to comply with the requirements of paras (a), (b), (c) and (d) of s 142(1) but, as provided by para (e), they are not required to obtain the consent of the other co-proprietors (ie the co-proprietors holding the minority share in the land). Once the application is submitted, it is then the duty of the land administrator to notify the co-proprietors, who are not parties to the application, of the application, in accordance with sub-s (3) of s 142. And the procedure to be followed by the land administrator thereafter are spelt out in sub-s (4) of s 142.

The learned counsel for the plaintiffs contended that since the first defendant, as a co-proprietor, had refused to consent to the application to the land administrator for partition, therefore this court has the power to

A entertain the present application by virtue of s 145(1)(a). With respect, I cannot agree to this contention. In my opinion, s 145(1)(a) only refers to a situation where it is the holder (or holders) of the *minority* share who intends to apply to the land administrator pursuant to s 142 but one of the co-proprietors has refused to consent to the proposal as required by
B s 142(1)(e). In such a situation, the holder of the minority share may apply to the court under s 145(1)(a).

To sum up, a co-proprietor (or co-proprietors) holding the majority share in a piece of land may only apply under s 141A read with s 142. Section 142, which is to be read with s 145(1)(a), is meant only for a co-
C proprietor (or co-proprietors) holding the minority share in the land.

However, in *Ku Yan,* the court takes a different view. There the plaintiff who was the holder of the majority share in the land had applied to the land administrator to partition the land under s 141A of the NLC. The other co-proprietors did not consent to the application. The application was rejected by the State Director of Land and Mines. The State Director
D did not give any reason for the rejection but advised the plaintiff to make the application before the High Court. The plaintiff thus applied to the High Court for partition purportedly under s 145(1) of the NLC. The defendants — the co-proprietors — opposed the application on the grounds that the court has no jurisdiction to hear the application. The learned
E judge, KC Vohrah J, held that the court has the jurisdiction and allowed the application. His Lordship ruled (at p 440):

> In my view, s 141A does not compel a co-proprietor holding the majority share in a piece of land to apply to the land administrator for approval to partition the land; it is merely a permissive section, and if he elects to make such an application, s 142(1) would apply to him bearing in mind para (e)
F of s 142(1) and bearing in mind that the land administrator would have to act in accordance with sub-ss (3) and (4) of the section in dealing with such an application.
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> In my view, too, a co-proprietor having the majority share in a piece of land thus is not barred from applying to the High Court under sub-s (1) of s 145 to have the co-proprietorship terminated and the land partitioned
G under sub-s (2) of s 145 on the general ground that a co-proprietor will not join in nor consent to the making of an application for partition. There is no reference in any part of Chapter 2 of Part 9 of the Code, a chapter dealing with partition of lands, that in respect of a co-proprietor holding the majority share in a piece of land, he must first apply to the land administrator for partition under s 145 before he applies to the High Court.
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> I therefore rule that I have jurisdiction to hear this application.

With the greatest respect, I disagree with the above view. Whilst it is true that s 145(1) confers on the court the power to make an order for partition, at the same time, however, it is also important to observe that it is a limited power, that is to say, the power is confined only to the
I circumstances as specified in paras (a) and (b) of sub-s (1). In the present case, I shall confine only to para (a) as the instant application is purportedly made under this paragraph. It is pertinent to note that under para (a), the power of the court to make an order for partition only arises in a situation

where 'any of the co-proprietors will not join in, nor consent to the making of, an application for partition'. This means that the co-proprietor who comes to the court invoking para (a) of s 145(1) must satisfy the court that the circumstances of his case satisfy the requirement of that paragraph. This means he has to satisfy the court that initially he intended to apply to the land administrator for partition under s 142 but was faced with the situation where he could not get the co-operation of the other co-proprietors.

However, in a case where the co-proprietor who is desirous of having the land partitioned is the holder of the majority share, such a situation can *never* arise. This is because, as I have held, he cannot apply to the land administrator for partition under s 142 as if he is the holder of the minority share and thus takes steps to bring in as co-applicants, or to obtain the consent of, all the other co-proprietors; and thereafter in the event one of the co-proprietors refused to join in or to consent, to apply to the court under s 145(1)(a). As the holder of the majority share, he can only apply to the land administrator under s 141A read with s 142. When he applies under these provisions, he is not required to obtain the consent of the other co-proprietor(s), and I wish to reiterate that this exemption is made very clear by s 142(1)(e). If he is so exempted, then the question of the consent of the other co-proprietor(s) does not arise. Now, if the question of consent of the other co-proprietor(s) does not arise in respect of the application of a co-proprietor who is the holder of the majority share, it follows therefore that para (a) of s 145(1) has no relevance to such co-proprietor.

If I may add further, it is also my respectful view that in *Ku Yan,* the plaintiff, after the rejection, should not have made an application to the High Court under s 145(1)(a). Instead, he should have appealed to the High Court against the decision of the State Director under s 418 of the NLC.

In conclusion, I hold that a co-proprietor in a piece of land *holding the majority share* in the land, if he is desirous of having the land partitioned, he must apply to the land administrator pursuant to ss 141A and 142 of the NLC. For the purpose of the application, the NLC does not require him to obtain the consent of the other co-proprietor(s). If the application is rejected by the land administrator or the State Director (as happened in *Ku Yan*), he may come to the court to seek redress, but it can only be done by way of appeal to the High Court pursuant to s 418 of the NLC. In no circumstances can he apply to the court by way of s 145(1)(a) of the NLC.

This application is therefore dismissed with costs.

Application dismissed.

Reported by Zahid Taib